

Decision **PROPOSED DECISION OF ALJ MCKINNEY** (Mailed 10/5/2012)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Susan Michael Montana,

Complainant,

vs.

Pacific Bell Telephone Company dba AT&T
California (U1001C),

Defendant.

Case 12-03-010
(Filed March 16, 2012)

**DECISION GRANTING MOTION TO DISMISS
COMPLAINT FOR LACK OF PROSECUTION**

1. Introduction

This decision grants the motion of Pacific Bell Telephone Company dba AT&T California to dismiss Case 12-03-010 for lack of prosecution. The dismissal is without prejudice.

2. Background

On March 16, 2012, Susan Michael Montana (Complainant) filed this complaint against Pacific Bell Telephone Company dba AT&T California (AT&T), apparently alleging that AT&T had placed false outgoing calls on her bill. Complainant is no longer a customer of AT&T.

On April 26, 2012, the assigned Administrative Law Judge (ALJ) in this proceeding issued a ruling (1) setting a prehearing conference (PHC) for May 14,

2012, (2) requiring the parties to meet and confer regarding the possibility of settlement or alternative dispute resolution, and (3) requiring each party to submit a PHC statement by May 10, 2012. The PHC was scheduled to be held in the Commission courtroom in San Francisco, but the ruling allowed parties to request to participate by telephone.

AT&T timely complied with the ruling by sending a request to meet and confer to Complainant via United Parcel Service, submitting a PHC statement, and appearing at the PHC.

Complainant did not request to participate in the PHC by phone, failed to appear at the PHC, failed to respond to the request of Defendant to meet and confer, and failed to submit a PHC statement.

On May 31, 2012, the ALJ received a letter dated May 27, 2012 from Complainant stating, amongst other things, that Complainant had been unable to attend the PHC.

On July 3, 2012, the Assigned Commissioner and Administrative Law Judge's Scoping Memo and Ruling (Scoping Ruling) was issued, providing Complainant with additional opportunities to pursue her case against AT&T. The Scoping Ruling set forth dates for a procedural schedule including dates for submitting testimony in August and for an evidentiary hearing on September 5, 2012 at the Commission's hearing room in Los Angeles.

Complainant did not submit either direct or rebuttal testimony as required by the procedural schedule.

On September 5, Complainant did not appear at the scheduled evidentiary hearing. At the evidentiary hearing, AT&T moved that the case be dismissed for lack of prosecution.

3. Discussion

The fact that Complainant has missed two hearing dates and has not filed testimony as required by the procedural schedule, demonstrates a lack of prosecution by the Complainant. Accordingly, AT&T's motion to dismiss this case should be granted.

4. Comments on Draft Decision

The proposed decision of the assigned ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. No comments were received.

5. Assignment of Proceeding

Commissioner Catherine J.K. Sandoval is the assigned Commissioner and ALJ Jeanne McKinney is the assigned ALJ in this proceeding.

Findings of Fact

1. Complainant failed to attend the May 14, 2012 PHC.
2. Complainant failed to submit testimony in August 2012 as required by the procedural schedule in the Scoping Ruling.
3. Complainant failed to appear at the September 5, 2012 evidentiary hearing.

Conclusions of Law

1. Complainant has failed to prosecute this case.
2. AT&T's motion to dismiss this case should be granted.
3. This decision should be effective immediately.

O R D E R

IT IS ORDERED that:

1. Case 12-03-010 is dismissed without prejudice for lack of prosecution.

2. Case 12-03-010 is closed.

This order is effective today.

Dated _____, at San Francisco, California.